IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.92 OF 2007
WITH
CIVIL APPLICATION NO.6719 OF 2007

Smt. Smita P. Jhaveri. ...Appellant.
Vs.
Union of India and ors. ...Respondents.

Mr. Mohan Jayakar i/by M/s. Khaitan & Jayakar for the Appellant.

Mr. R.V.Desai, Sr. Advocate with A.S.Rao and H.P.Chaturvedi for the Respondents.

CORAM : F.I. REBELLO & R.S. MOHITE, JJ.
DATED : 20TH DECEMBER,2007.

PC :

1. The appellant is in appeal against the order of the Tribunal whereby the appeal preferred has been dismissed by common order dated 30.7.2007 alongwith other appeals.

2. At the time of hearing of this appeal, on behalf of the appellant, the learned counsel has drawn our attention to Section 28 of Foreign Exchange Regulation Act, 1947 to submit that the partner must be in-charge of the business to be held liable. Under Section-68 in the case of partnership, the word company would correspond to the partnership (firm) and the partners would correspond to Directors. Show Cause Notice was issued to the appellant. It may be pointed out that in fact, no reply was filed to the show cause notice by the appellant. It is not the case of the appellant that she

took up the plea that she was not in-charge of the business and she was not liable. No such plea was taken in appeal before the Appellate Authorities. This plea is sought to be raised for the first time before this court.

3. The learned counsel submits that such a plea was taken by another partner Piyush Jhaveri, whose statement was recorded and he made a statement that he was in-charge of the business of the partnership. In our opinion, in the absence of documentary evidence in the form of partnership deed that Piyush Jhaveri was the Managing partner or by resolution was entrusted with the responsibility of managing the affairs of the partnership, the statement by itself cannot be accepted that the appellant was not in charge. In the absence of material evidence that appellant was not in-charge of the partnership firm the offence alleged would not come out of Section 68 of the Act.

4. In the light of the above, we are of the opinion that there is no merit in the appeal and consequently this appeal along with Civil Application stands dismissed.

(R.S. MOHITE, J.) **(F.I.REBELLO, J.)**